

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

KELVIN MAURICE HORNE,)
)
Petitioner,)
)
v.) 1:17-cr-288-1
)
) 1:21-cv-222
UNITED STATES OF AMERICA,)
)
Respondent.)

ORDER

On July 11, 2023, the United States Magistrate Judge's Recommendation ("Recommendation") was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. (Docs. 117, 118.) No objections were filed within the time limits prescribed by Section 636. However, Petitioner filed a motion to dismiss without prejudice.¹ (Doc. 119.)

The court need not make a de novo review and the Magistrate Judge's Recommendation is hereby adopted. In light of this order adopting the Recommendation and dismissing this action, Petitioner's motion to dismiss will be denied as moot.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (Doc. 117), is **ADOPTED**. **IT IS FURTHER ORDERED**

¹ Petitioner concedes in his motion that the Magistrate Judge is correct, but requests that the motion be dismissed without prejudice. Because Petitioner offers no justification for a dismissal without prejudice, the matter is dismissed with prejudice.

that Respondent's Motion to Dismiss Petitioner's Motion under 28 U.S.C. § 2255, (Doc. 106), is **GRANTED**, and Petitioner's Section 2255 Motion, (Doc. 103), is **DISMISSED**.

IT IS FURTHER ORDERED that Petitioner's Motion to Dismiss Without Prejudice, (Doc. 119), is **DENIED** as **MOOT**.

The court further finds there is no substantial showing of the denial of a constitutional right affecting the conviction nor a debatable procedural ruling, therefore a certificate of appealability is not issued.

A Judgment dismissing this action will be entered contemporaneously with this Order.

This the 8th day of September, 2023.

William L. Osten, Jr.
United States District Judge